

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

January 24, 2001

IN RE:

PETITION OF LYNWOOD UTILITY CORPORATION FOR
APPROVAL OF TRANSFER OF CONTROL *NUNC PRO*
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DOCKET NO.
00-00690

ORDER APPROVING TRANSFER OF AUTHORITY *NUNC PRO TUNC*

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on November 7, 2000 on the Petition (the "Petition") of Lynwood Utility Corporation ("Lynwood") for approval of a transfer of authority to provide utility services *nunc pro tunc*. This transfer is part of the sale of Lynwood on May 12, 1999 by Mr. David Terry to Southern Utility Corporation ("Southern").

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

Background

In Authority Docket No. 99-00507, the Authority approved Lynwood's request for a rate increase on February 29, 2000. An Order reflecting this decision was issued on May 10, 2000. During the rate proceeding, it was determined that ownership of Lynwood was transferred on May 12, 1999 from Mr. David Terry to its current owner, Southern, resulting in a de facto transfer of authority to provide utility services, and that this transfer of authority took place without a request by either Mr. Terry or Southern for approval as required by Tenn. Code Ann. § 65-4-113. Accordingly, after the rate increase was approved, Docket No. 99-00507 was left open for further consideration of this transfer and two other issues.¹

On August 2, 2000, a Hearing was held at which Mr. Terry testified concerning the three outstanding issues and his general involvement with Lynwood while he was its owner. At that Hearing, Lynwood was directed to file a request for approval of the transfer of authority to provide utility services involved in the sale of Lynwood by Mr. Terry to Southern.

On August 7, 2000, Lynwood filed its Petition for Authority approval *nunc pro tunc* of the transfer of ownership and control of Lynwood from Mr. Terry to its current owner. Although this Petition has been assigned a separate docket number, the Petition was filed pursuant to the Directors' request relative to Docket No. 99-00507.

¹ At the Authority Conference held on July 11, 2000, the Directors granted intervention in Docket No. 99-00507 to Mr. Jacob C. (Chris) Martin as to the three outstanding issues in that proceeding. Mr. Martin has been served with copies of all documents filed with respect to the Petition to transfer authority in the instant matter (Docket No. 00-00690). Generally, the other two issues involve the alleged waiver of certain tap fees by Lynwood's previous owner and Lynwood's apparent over-billing of its one non-residential customer, Walnut Grove Elementary School.

The Petition

As the Petition states, Lynwood provides sewer service in Williamson County pursuant to a certificate of public convenience and necessity originally issued to Lynwood Utility Company on June 14, 1976. Lynwood Utility Corporation's acquisition of the assets and operating authority of Lynwood Utility Company was approved by the Tennessee Public Service Commission in an Order dated June 27, 1996. On May 12, 1999, all of the outstanding stock of Lynwood was transferred from its sole shareholder, Mr. Terry, to Southern, the current owner of Lynwood.

As the Petition further states:

Since the transfer of ownership and control, Lynwood has continued to operate as it has in the past, using the same name, tariff, and operating authority. The transfer of control has been transparent and should have no adverse effect on Lynwood's customers. Before the transfer of control occurred, the new management of Lynwood became familiar with the operations of Lynwood by managing the day-to-day operations of Lynwood for approximately five months before the transfer under a management contract with Lynwood.

Southern Utility Corporation has a vested interest in the financial viability of Lynwood in that the principals of Southern Utility Corporation are involved in the development of the River Landing Subdivision which will receive sewer service from Lynwood. Southern Utility Corporation and its related companies have access to financial resources to upgrade the Lynwood treatment and collection system. Since Southern Utility Corporation acquired the stock of Lynwood and put in new management, Lynwood has made extensive capital improvements to and has expanded its sewer treatment plant. Lynwood's financial condition has improved, and Lynwood has substantially increased its compliance with the rules and regulations of [the] Authority.²

In addition to these facts which, the Authority finds, favor granting Lynwood's Petition, the rate increase approved in Docket No. 99-00507 is expected to improve Lynwood's financial situation and its ability to provide utility service.³

² Petition, August 7, 2000, pp. 1-2.

³ See *Order Approving Rate Increase*, Docket No. 99-00507, May 10, 2000, p. 2.

Although Authority approval of the transfer of authority should have been sought at the time Mr. Terry sold Lynwood to Southern, Lynwood's current owner has demonstrated that such approval is warranted, both through its Petition in this docket and through its actions in relation to Docket No. 99-00507.

Findings

The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on November 7, 2000. Based upon careful consideration of the Application and the Exhibits thereto, and of the entire record of this matter, the Authority finds and concludes as follows:

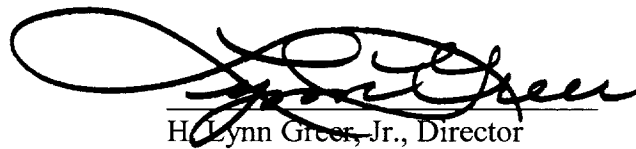
1. That the Authority has jurisdiction over the subject matter of this Petition pursuant to Tenn. Code Ann. § 65-4-113;
2. That Lynwood Utility Corporation has been granted authority to provide utility service in Tennessee;
3. That on May 12, 1999, Southern Utility Corporation acquired all of the outstanding stock of Lynwood Utility Corporation, thus acquiring the assets and operating authority of Lynwood Utility Corporation;
4. That Southern Utility Corporation has the suitability, financial responsibility, and capability to perform efficiently the utility service to be transferred to it; and
5. That the transfer of authority will benefit the consuming public.

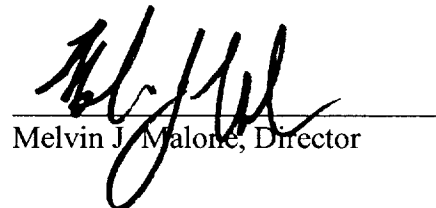
IT IS THEREFORE ORDERED THAT:

1. The Petition of Lynwood Utility Corporation for approval of the transfer of authority described herein is approved *nunc pro tunc*; and

2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary